



General Assembly

February Session, 2016

Raised Bill No. 5561

LCO No. 2686



Referred to Committee on BANKING

Introduced by:
(BA)

AN ACT CONCERNING FAIRNESS IN CONSUMER CONTRACTS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective July 1, 2016*) For the purposes of this
2 section and sections 2 and 3 of this act:

3 (1) "Consumer contract" means a contract prepared by or on behalf
4 of a business or commercial party for use in such party's routine
5 business or commercial transactions with consumers;

6 (2) "Consumer" means an individual who uses, purchases, acquires,
7 attempts to purchase or acquire or receives an offer for any real
8 property, tangible or intangible goods, services or credit for personal,
9 family or household purposes;

10 (3) "Business or commercial party" means the party on behalf of
11 which a standard form contract is prepared; and

12 (4) "Inconvenient venue" means a place other than (A) the judicial
13 district where the consumer resides, or (B) where the consumer's
14 agreement to the transaction occurred.

15 Sec. 2. (NEW) (*Effective July 1, 2016*) (a) A consumer may seek a
16 court order reforming any consumer contract to which the consumer is
17 a party when:

18 (1) The consumer contract is not written in plain language pursuant
19 to the provisions of section 42-152 of the general statutes or does not
20 comply with any other consumer contract provisions set forth in
21 chapter 742 of the general statutes;

22 (2) The consumer contract is not written in the language in which
23 the transaction was conducted, unless it can be proven that fewer than
24 ten per cent of the transactions of the business or commercial party are
25 conducted in the language in which the transaction was conducted; or

26 (3) All of the material terms of the consumer contract are not
27 contained in a single document.

28 (b) Such reformed contract shall reflect the understanding of the
29 parties. The court may exclude from such reformed contract terms that
30 are not written in plain language pursuant to the provisions of section
31 42-152 of the general statutes, not written in the language in which the
32 transaction was conducted, or contained in a separate document.

33 (c) Nothing in this section shall be construed as limiting any
34 statutory or common law.

35 Sec. 3. (NEW) (*Effective July 1, 2016*) (a) The following contractual
36 terms shall be deemed substantively unconscionable when included in
37 a consumer contract that was not drafted by the consumer:

38 (1) A requirement that resolution of legal claims take place in an
39 inconvenient venue;

40 (2) A waiver of the consumer's right to assert claims or seek
41 remedies provided by state or federal law;

42 (3) A waiver of the consumer's right to seek punitive, minimum,

43 multiple or other statutory damages as provided by law or attorney's
44 fees if authorized by statute or common law;

45 (4) A requirement that any action brought by the consumer with
46 regard to the contract be initiated within a time period that is shorter
47 than the applicable statute of limitations;

48 (5) A requirement that the consumer pay fees and costs to bring a
49 legal claim that substantially exceeds the fees and costs that would be
50 required to bring a claim in a state court or that makes no provision for
51 the waiver of fees and costs for a consumer who cannot afford such
52 fees and costs; and

53 (6) A failure to permit a party to present evidence in person or to
54 ensure that the consumer can obtain, prior to a hearing, any
55 information that is material to the issue to be determined at such
56 hearing.

57 (b) In determining whether the terms described in subsection (a) of
58 this section are unenforceable, a court shall consider the principles that
59 normally guide courts in the state in determining whether
60 unconscionable terms are enforceable. The common law and the
61 Uniform Commercial Code shall also guide the court in determining
62 the enforceability of unfair terms not specifically identified in
63 subsection (a) of this section.

64 (c) In determining whether the rebuttable presumption that a term
65 in a consumer contract found to be unconscionable is unseverable from
66 the provision in which it is situated has been rebutted, the court may
67 consider the general principles of contract law regarding the
68 severability of unenforceable terms.

69 (d) It shall be an unfair and deceptive practice in violation of the
70 Connecticut Unfair Trade Practices Act, sections 42-110a to 42-110q,
71 inclusive, of the general statutes, to include any of the presumptively
72 unconscionable terms identified in subsection (a) of this section in a

73 consumer contract that was drafted by a party other than the
74 consumer. A party who prevails on a claim under this section shall be
75 entitled to all damages and remedies available pursuant to the
76 Connecticut Unfair Trade Practices Act.

77 (e) Any person may bring a civil action for violation of this section
78 on behalf of such person and the state. A person bringing such action
79 shall be referred to as a qui tam plaintiff. Such action shall be brought
80 in the name of the state and may only be dismissed if the Attorney
81 General gives written consent to the dismissal and reasons for
82 consenting.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2016</i>	New section
Sec. 2	<i>July 1, 2016</i>	New section
Sec. 3	<i>July 1, 2016</i>	New section

Statement of Purpose:

To (1) set standards for secured and unsecured lending, (2) clarify what constitutes substantively unconscionable terms in a consumer contract written by a party other than the consumer, and (3) make the inclusion of such terms in a consumer contract an unfair and deceptive trade practice under the Connecticut Unfair Trade Practices Act.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]